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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of:	)	
	)	
Implementation of Sections of	)	
the Cable Television Consumer	)	MM Docket No. 92-266
Protection and Competition	)	
Act of 1992	)	
	)	
Rate Regulation	)	

PETITION FOR STAY

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Prime Cable of Alaska, L.P.

Dated: June 11, 1993

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SUMMARY

The Coalition of Small System Operators, together with Prime Cable of Alaska, L.P., submit this Petition for Stay of the Federal Communications Commission's cable television rate regulations. The Commission's implementation of its rate regulations as set forth in its Report and Order, absent standards to guide the Petitioners through a cost-of-service analysis, will irreparably harm the Petitioners, the Petitioners will likely succeed on the merits of their argument on reconsideration or on appeal, and the equities favor granting the stay. The Petitioners request the Commission stay its implementations of its rate regulation pending reconsideration of the benchmark rates and the final promulgation of cost-of-service standards.

As set forth in the Petition, the benchmark tables adopted by the Commission are based on seriously flawed methodology. Not only are there inaccuracies in the data the Commission used to develop the benchmarks, but the Commission's sample of small competitive cable systems is so small that the benchmarks are wholly arbitrary. Moreover, in establishing the benchmarks the Commission improperly included a significant number of municipal systems as well as private systems engaged in "price wars", both of which tend to charge rates lower than competitive systems can charge in the long run. Finally, the rules are arbitrary because non-competitive systems are required to reduce rates to levels below the rates charged by many competitive systems.

Despite the inherent problems with the benchmarks, the Commission has not afforded the Petitioners with a viable alternative to the benchmarks since it has not yet issued standards generating a cost-of-service analysis. The Petitioners are left with the daunting prospect of either lowering rates to levels required under the benchmarks (which, in many instances will drive the Petitioners into significant

loss situations, put them into default of their bank loans, and may even force them out of business), or conduct a hypothetical cost-of-service analysis without any standards to guide them, in the knowledge that they may be forced later retroactively to reduce their rates below benchmark levels.

For these reasons, we respectfully submit that the Commission should stay the implementation of the cable television rate regulations pending reconsideration of the benchmark rates and the final promulgation of cost-of-service standards.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Protection and Competition Act	)	
of 1992	)	
	)	
Rate Regulation	)	

To: The Commission

PETITION FOR STAY

The Coalition of Small System Operators, which comprises 22 small system operators (the "Coalition") 1/, together with Prime Cable of Alaska, L.P. ("Prime Cable") 2/, hereby petition the Federal Communications Commission

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1/ The Coalition of Small System Operators consists of: ACI Management, Inc.; Anderson Pacific; Balkin Cable; Buford Television, Inc.; Classic Cable; Community Communications Co.; Douglas Communications Corp. II; Fanch Communications, Inc.; Frederick Cablevision, Inc.; Galaxy Cablevision; Harmon Communications Corp.; Horizon Cablevision, Inc.; MidAmerican Cable Systems, Limited Partnership; Mission Cable Company, L.P.; MW1 Cablesystems, Inc.; Phoenix Cable, Inc.; Rigel Communications, Inc.; Schurz Communications, Inc.; Star Cable Associates; Triax Communications Co.; USA Cablesystems, Inc.; and Vantage Cable Associates. Eleven of the twenty-two Coalition members alone own and operate approximately 3,041 franchises with 2,052 headends serving in excess of 775,000 subscribers. The Coalition participated in the rate regulation rulemaking by filing comments (dated January 27, 1993) and reply comments (dated February 11, 1993).

2/ Prime Cable of Alaska, L.P., which owns and operates a cable system in Anchorage, Alaska, is participating in this Petition for Stay because of its common interest in ensuring that the Commission's regulations adequately account for the needs of cable operators whose characteristics are likely to result in above-average costs. See Affidavit of Rudolph H. Green ¶ 5, attached hereto as Exhibit A ("Prime

pursuant to 47 C.F.R. §§ 1.44(e) & 1.62(n), for a stay of its Report and Order 3/ in the above-referenced proceeding. A stay is requested pending consideration and resolution of the issues raised here regarding the irrationality of the benchmarks adopted by the Commission and pending completion of the proceeding to be initiated by the Commission to set standards for cost-of-service showings, and any review by the Court of Appeals. As explained more fully below, a stay is warranted because implementation of the Commission's Report and Order will cause irreparable harm to the Petitioners, the Petitioners are likely to succeed on the merits of their Petition for Reconsideration or on review by the Court of Appeals, and the balance of the equities favors granting a stay.

I. THE BENCHMARK TABLES ADOPTED BY THE COMMISSION'S RATE REGULATION ORDER ARE SERIOUSLY FLAWED, AND THE COMMISSION HAS NOT TO DATE PROVIDED ANY VIABLE

cable operators to fully recover the costs of providing basic tier service and to continue to attract capital," Cable Rate Regulation Executive Summary, Appendix A to the Report and Order, at 17-18, the Commission determined that cable operators may charge rates higher than those based on the benchmarks by demonstrating through a cost-of-service analysis that higher rates are warranted. If an operator chooses this latter course, it subjects itself to the possibility of a determination that its rates should be lower than the benchmarks. Cable operators are expected under the Report and Order to readjust rates to the levels specified by the benchmark analysis by June 21, 1993.

As explained below, the benchmarks -- especially as they relate to the small systems and other cable companies like Prime Cable with higher than average costs -- are based on a statistical sample so small and so illogical that they constitute an arbitrary and capricious exercise of the Commission's regulatory authority. The Commission, moreover, has not yet issued regulations explaining the alternative cost-of-service analysis. Thus, as of June 21, 1993, cable operators are left with a Hobson's choice of either reducing their rates based on the benchmarks that they know to be too low to permit them to operate profitably or staking their future on their ability to make a demonstration under hypothetical cost-of-service standards that higher rates are warranted, with the attendant risk that they will be ordered to reduce rates below the benchmark. Because any reduction of rates may require refunds back to the effective date of the rules (currently June 21, 1993), it is imperative that the effective date be stayed pending reconsideration of the benchmark rates and final promulgation of cost-of-service standards, or resolution of appeals. In addition, the current timetable for rate regulation has imposed a severe administrative burden on the Petitioners; that alone warrants relief.

A. The Benchmarks Are Flawed

Especially in the absence of a meaningful cost-of-service alternative, the importance of the benchmark levels to cable operators cannot be doubted. Yet the benchmarks are based on a seriously flawed methodology. See generally Declaration of William Shew, Director of Economic Studies, Arthur Andersen Economic Consulting, attached hereto as Exhibit B ("Arthur Andersen Declaration"). To establish the benchmarks, the Commission relied on the results of its survey, as described in Appendix E to the Report and Order. Respondents to the survey did not report cost information. The survey sought only information on prices. Of the 1107 community units for which responses were received, the Commission determined that the 141 of those systems that operated in a competitive environment should be used as the primary basis for the benchmarks. Of these 141 systems, 79 were systems with less than 30 percent penetration, 46 faced actual competition, and 16 were found to be competitive as municipal overbuilds or municipal systems. Only 45 of the 141 systems found to operate in a competitive environment were systems with less than 1000 subscribers; 32 had less than 30 percent penetration; 7 were found to face actual competition; and 6 were municipal systems.

As explained in the Arthur Andersen Declaration at 9-10, "[e]ven the figure of 45 almost certainly overstates the number of cable systems in the database capable of providing a reliable guide to 'competitive' prices." This is so because "[m]arkets involving municipal cable systems and short-term overbuilds cannot be expected to provide a reliable guide to the prices that characterize sustainable competition between private cable systems." Id. at 10. Municipal systems, for example, have significant cost advantages that are not available to private systems. Analysis of the municipal systems in the FCC database has demonstrated that

"basic service prices charged by municipal systems are almost 15% below prices charged by competing private systems, other factors equal." Id. at 11.

In addition, six of the seven private small systems found to be facing actual competition have existed for five years or less. "Such short-term competition is typically characterized by price wars during which prices are held below actual cost." Id. at 10. Thus, as the Arthur Andersen Declaration explains, it is likely that the systems facing actual competition are operating near or below cost in an effort to gain a competitive edge in the short run. Significantly, the Commission made no

Commission has established 3100 different per channel rates. These rates apply to the thousands cable systems in the country with less than 1000 subscribers.

As might be expected given this small sample, individual benchmark tables are in some instances based on exceedingly little information. The two tables (and 620 rates) for cable systems with 500 - 750 subscribers are, for example, based primarily on the survey results from only two competitive systems of that size. Tables for systems with between 750 and 1000 subscribers are based primarily on the rates of five competitive systems. And tables for systems with 50 to 100 subscribers are based primarily on seven survey respondents.

to continue to attract capital -- and thus to realize the reasonable profit contemplated by section 623(b)(2)(C)(vii) -- there is not to date any mechanism that provides an alternative to the benchmarks. As of June 21, 1993, a cable operator that believes the benchmark rates are inadequate (and that elects to stay in the cable business) must determine whether to abide by those rates and suffer losses, or to attempt to make a cost-of-service showing. Without any indication of the factors or the standards that will be applied to the cost-of-service question, however, an operator simply has no basis for determining whether or not it will ultimately be

systems. See Declaration of Michael J. Pohl, attached hereto as Exhibit E, and Affidavit of Dean Wandry, Exhibit C. Thus, it would in many cases be impossible or impractical for small systems to provide a cost-of-service analysis, even if the necessary regulatory guidance were in place.

II. A STAY IS APPROPRIATE BECAUSE THE PETITIONERS WILL SUFFER IRREPARABLE HARM IF A STAY IS NOT GRANTED, THEY ARE LIKELY TO SUCCEED ON THE MERITS, AND THE PUBLIC INTEREST FAVORS A STAY

In considering requests to stay its rulings, the Commission has cited the standards articulated by the Court of Appeals for the District of Columbia Circuit. See, e.g., Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-264, at 2 n. 7 (May 14, 1993) (citing Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921 (D.C. Cir. 1959), and Washington Metropolitan Area Transit Commission v. Holiday Tours, 559 F.2d 841 (D.C. Cir. 1977)). Under those decisions, the question whether a stay is warranted is governed by consideration of four factors: (1) the movant's likelihood of success on the merits, (2) the possibility of the movant suffering irreparable injury if the stay is not granted, (3) whether other parties are likely to suffer substantial harm if a stay is granted, and (4) the public interest. A party seeking a stay is not required to demonstrate that it will probably succeed on the merits. Where the harm it will suffer is great, it need only show that it has a substantial possibility of success. Washington Metropolitan Area Transit, 559 F.2d at 843-44.

A. The Petitioners Will Suffer Irreparable Harm if a Stay is Not Granted

The Commission's regulatory program, under the present timetable, poses an unfair administrative and financial burden on the Petitioners. These operators are currently shouldering exorbitant administrative costs in an effort to comply not only with the rate regulations, but also with the Commission's new regulations governing other aspects of their operations. For example, one small systems operator sent out 1,259 letters to broadcasters by the May 3, 1993 deadline under the new signal carriage rules. The same operator sent out 2,271 notifications to broadcasters on June 1, 1993. And, since May, it has responded to 375 inquiries from broadcasters asking for clarification or additional information relating to

benchmarks, it is plain that many of these cable operators could not muster the personnel or incur the high costs of commencing, let alone completing, cost-of-service analyses by June 21, 1993, even if the Commission had issued the cost-of-service analysis.

Aside from the fact that many Petitioners do not have the resources necessary to calculate the benchmarks and undertake cost-of-service analyses, implementation of the Commission's rate regulations will cause irreparable harm to the Petitioners. As discussed below, the rates charged by the many of the Petitioners on September 30, 1992, exceeded the benchmarks. With no opportunity to conduct a definitive cost-of-service analysis, many Petitioners may be forced on June 21, 1993, to reduce their rates to confiscatory levels.

For example, Fanch Communications operates a cable system in Greystone, Colorado, with 557 subscribers. In 1992 the system had revenues of

experience a net cash loss of $0.91 a subscriber each month. 5/ Under the FCC's benchmark analysis, the systems would have a net cash loss per month per subscriber of $3.32. See Declaration of Vince King, attached hereto as Appendix F. This reduction in cash flow would create a violation of the systems' forbearance agreement from their lenders. "[S]uch violations could cause the systems to go into bankruptcy, and ultimately cause deactivation of the systems." Id.

It is not only small systems that would face serious financial problems if they were to comply with benchmark-mandated reductions. Prime Cable, which owns and operates a cable television system serving the Anchorage, Alaska area, would be forced to comply with the benchmarks even though its operational costs far exceed those typical of cable companies in the "lower 48". See Affidavit of Rudolph H. Greene, Exhibit A, ¶ 5. Under the benchmark system, it will have to reduce its rates a full 10 percent of the amount it was charging on September 30, 1992, resulting in a reduction of revenues of nearly $570,000 in the three month period from July 1, 1993, to September 30, 1993. Id. ¶ 3. In the event Prime Cable is forced to reduce its rates under the benchmark system, it anticipates that it will be in default of its debt to cash flow ratio covenant of its loan agreement, in which case its lender may accelerate the entire outstanding principal amount of Prime Cable's loan. Id. ¶ 4.

If the Coalition members and Prime Cable reduce their rates to benchmark levels, they cannot recover any lost revenue from either their franchise authorities or subscribers if the benchmarks are later found to be arbitrary and unlawful. The cable operators will forever lose revenues for those systems with

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5/ The systems have average revenue of $30.41 per subscriber per month and average operating expenses of $22.81, average interest expenses of $5.69, average principal reduction requirements of $0.94 and average routine capital costs of $1.88.

rates set at unduly low benchmark rates. This is obviously a direct and irreparable injury warranting a stay.

In addition, neither Prime Cable nor the Small Systems can even engage in any meaningful cost-of-service analysis since the Commission has not issued standards. The Commission stated in its Report and Order that it would issue simplified standards by which small systems should conduct their cost-of-service analyses, as well as general standards for cost-of-service analyses. However, the Commission has not yet issued any standards, leaving all cable operators, including the Petitioners, without any basis whatsoever to commence meaningful analyses. Accordingly, if the Petitioners choose not to automatically reduce rates that they consider reasonable and justifiable, the Petitioners will be required to rely on untested cost-of-service principles -- with the threat of having rates reduced retroactively to June 21, 1993, below the benchmark levels. In essence, the Commission has given all cable operators, including the Petitioners, no alternative but to reduce their rates to confiscatory levels or to take a blind stab at a cost-of-service showing that ultimately and retroactively could reduce rates even lower.

B. The Petitioners Are Likely to Succeed on the Merits

Under the Administrative Procedure Act, an agency's rulemaking may be set aside if it is found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Although a "presumption of regularity" is extended to an agency rule, Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 415 (1971), that presumption does not shield the agency action from a "thorough, probing, in depth review." Id. An agency's actions are considered to be arbitrary and capricious "if the agency relies upon improper factors, ignores important arguments or evidence, fails to articulate a

reasoned basis for its decision, or produces an explanation that is 'so implausible that it could not be ascribed to a difference in view or the product of agency expertise.'" Natural Resources Defense Council v. EPA, 822 F.2d 104, 111 (D.C. Cir. 1987) (quoting Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)). The agency "must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.' " State Farm, 463 U.S. at 43 (quoting Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168 (1962)).

In this rulemaking, we submit, the Commission's actions do not comport with the Administrative Procedure Act, both because they fail to accord with the statutory mandate and because the benchmarks are arbitrary and capricious.

First, it is plain that the system of rate regulation that is scheduled to go into effect on June 21, 1993, is not "in accordance with law." In permitting re-regulation of cable rates, Congress was obviously concerned that operators be permitted to realize a reasonable rate of return on their investment. That concern, of course, is grounded in constitutional considerations, for the Supreme Court has long held that if regulated rates are so low as to be confiscatory, an unconstitutional taking occurs. See Duquesne Light Co. v. Barasch, 488 U.S. 299, 307-08. Accordingly, where, as here, Congress has mandated that rates be "reasonable," the Court has held that the congressional standard "coincides with that of the Constitution." FPC v. Natural Gas Pipeline Co., 315 U.S. 575, 586 (1942). "By long-standing usage in the field of rate regulation, the 'lowest reasonable rate' is one which is not confiscatory in the constitutional sense." Id. at 585.

Under both the constitutional and statutory standard, a reasonable rate "should be 'sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital'; the rate should also be

'commensurate with returns on investments in other enterprises having corresponding risks." Illinois Bell Telephone Co. v. FCC, 988 F.2d 1254, 1260 (D.C. Cir. 1993) (quoting FPC v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944)). Nothing in the Commission's rate regulation to date provides any assurance that cable operators will be able to maintain credit, attract capital, and realize commensurate returns. In adopting a cost-of-service alternative, the Commission itself recognized that the benchmarks will in many instances be inadequate as both a statutory and constitutional matter. In the absence of guidance on the cost-of-service standards, moreover, it is impossible even to determine whether the rate regulation as a whole will permit reasonable returns for cable operators. Accordingly, the system that the FCC proposes to implement on June 21, 1993 is not "in accordance with law."

As the accompanying declarations demonstrate, the effect of this incomplete regulatory scheme will be especially severe on operators, such as the small systems and Prime Cable, whose costs are above average. Their ability to maintain credit, attract capital, and realize commensurate returns will be severely restricted, if not eliminated, under the Commission's rate regulation. Because the Commission's rate regulation fails adequately to address the particular needs of small systems, it also violates section 623(i) of the Act, which provides: "In developing and prescribing the regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have fewer than 1,000 subscribers." As we have demonstrated, the Commission has plainly failed to comply with this requirement of law.

Second, as we have explained above, and as further demonstrated in the Arthur Andersen Declaration, the only certain guide for rates under the Commission's Report and Order -- the benchmarks -- are not adequately supported

by the data provided to the Commission, and are so flawed that it is impossible to conclude that there is any "rational connection between the facts" presented to the Commission "and the choice made." State Farm, 463 U.S. at 43. Accordingly, promulgation of the benchmarks was an arbitrary and capricious act by the Commission.

C. Other Parties Will Not Be Harmed by a Stay

A stay of the Commission's rate regulation pending reconsideration and review and development of cost-of-revenue standards will not work substantial harm to other interested parties. Under the Commission's Freeze Order, cable television rates may not be raised at the present time, and that order could plainly be extended if further review of the rate regulation so required. Delay of the effective date of the rules, therefore, will not result in any cable subscribers paying more for their service than they now pay. To be sure, if a stay were granted, subscribers would not receive the immediate benefits of rate reductions. This harm, however, would not be substantial, and may be subject to remedial measures by the Commission that would make the subscribers whole in the unlikely event that the proposed rate regulation, such as it is, is not modified. Any harm to subscribers by a delay in the receipt of these benefits, moreover, pales in comparison to the harm that would be visited on cable companies -- whose very existence may be at stake -- from immediate implementation of a far reaching yet incomplete scheme of rate regulation. In addition, we submit that subscribers would not ultimately benefit from a system that secures some immediate, if temporary, reduction in rates at the cost of mass confusion in the cable television market, the inability of operators to

D. The Public Interest Requires that a Stay Be Granted

For the reasons explained above, we further submit that the public interest in orderly and rational rate regulation, achieved in a lawful manner, compels the entry of a stay. 6/

6/ There are no procedural barriers in the Cable Act that prohibit the Commission from staying the implementation of the rate regulations it set forth in its Report and Order and reconsidering the benchmarks it prescribed therein. The

CONCLUSION

For the reasons stated herein, Petitioners Coalition of Small System Operators and Prime Cable request that a stay of the effective date of the Commission's regulations be granted.

Respectfully submitted,

THE COALITION OF
SMALL SYSTEM OPERATORS
AND PRIME CABLE OF
ALASKA, L.P.

By: _____

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Their Attorneys

Dated: June 11, 1993

EXHIBIT A

AFFIDAVIT

STATE OF TEXAS §

COUNTY OF TRAVIS §

I, Rudolph H. Green, am the duly elected and qualified Vice President of Prime Cable Fund I, Inc., general partner of Prime Cable of Alaska, L.P. ("Prime Cable") and have served in such capacity at all times relevant for the facts set forth herein. I am submitting this Affivadit in support of the request of Prime Cable for a stay of the implementation of the rules and regulations of the Federal Communications Commission (the "FCC") relating to rate regulation, and aver as follows:

1. "Prime Cable owns and operates a cable television system serving Anchorage, Alaska and surrounding areas. As of May 31, 1993, this cable system provided service to 51,436 subscribers."

2. "Applying the methodology prescribed by the FCC in its benchmark formula for determining whether Prime Cable's rates are reasonable, Prime Cable management has determined that its current aggregate rate for basic service and cable programming service in Anchorage is $31.58. Prime Cable management has determined that the aggregate rate for its basic cable service and cable programming service prescribed by the FCC is $26.71. Accordingly, in order to comply with the FCC prescribed rate formula, Prime Cable would have to reduce the aggregate rate for its basic cable service and cable programming services by $4.87."

3. "Prime Cable management has determined that a reduction in the aggregate rate for basic and programming service described above would result in a reduction in projected revenues of approximately $570,000 from July 1, 1993 thru September 30, 1993, and a reduction in cash flow of the same amount over the over the same period."

4. "Prime Cable's loan agreement with it bank lenders requires that during the period July 1, 1993 thru September 30, 1993 it maintain a debt to cash flow ratio of 6.76. Prime Cable anticipates that with the reduction in its cash flows described above, its debt to cash flow to debt ratio will increase to 7.64 over the specified period, thereby causing it to be in default of its debt to cash flow ratio loan covenant. Under the terms of Prime Cable's loan agreement, the lenders may cause the entire outstanding principal amount of the loan to be accelerated if Prime Cable violates any of its loan covenants. In addition, if the rates determined by the benchmark formula or the FCC benchmark

formula are later struck down or revised, Prime Cable believes that it will not be able to recover the lost revenue from its subscribers or otherwise."

5. "Although Prime Cable's costs in Alaska are considerably higher than the costs for the typical cable system in the lower 48 states, the benchmark formula or benchmark system does not account for these higher costs. To the best of our knowledge, no Alaska cable systems were used in the data that the FCC relied on in establishing its benchmarks. The only way under the FCC's rules that Prime Cable may obtain consideration of these higher costs and to avoid violating its loan covenants is to rely on a "cost of service" showing. But the FCC has threaten that any cable operator, such as Prime Cable, that relies on a cost of service showing may have its rates reduced even further than under the benchmark system. The FCC has not yet established the standards that it will use in evaluating cost of service showings. Because of the uncertainty of the current situation, Prime Cable is unable to make a rational decision."

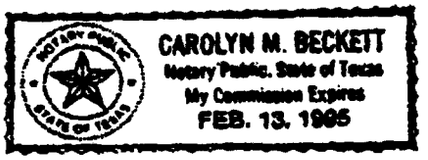
6/10/93
DATE

Rudolph H. Green
Vice President

SWORN TO AND SUBSCRIBED BEFORE ME, by the said Rudolph H. Green, on this the 10th day of June, 1993.

Carolyn M. Beckett
Notary Public in and for

My commission expires _____



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DECLARATION

I, William Shew, hereby declare under penalty of perjury that the following statements are true and correct:

I am Director of Economic Studies, Arthur Andersen Economic Consulting. I have engaged in numerous studies of the economics of cable systems and television markets in the United States and Europe. My curriculum vitae is attached.

I have been asked to examine the foundation of the benchmarks proposed by the FCC to regulate the prices of basic cable services, particularly as those benchmarks apply to small cable systems, defined as having fewer than 1000 subscribers. The benchmarks are intended to describe the prices that "competitive" cable television systems would charge for basic cable service packages. The FCC recognized that the prices a cable system charges -- whether "competitive" or not -- depend on characteristics of the service it provides. Its schedule of competitive benchmarks is a function of (1) the number of system subscribers, (2) the number of channels available on all regulated tiers, and (3) the number of satellite delivered channels on all regulated tiers. The FCC plans to prohibit any "non-competitive" cable system from charging service prices higher than the benchmark prices that, according to its analysis, a "competitive" cable system would charge in the same circumstances.

My conclusions concerning the statistical validity and the soundness of the benchmarks can be summarized as follows:

1. There are inaccuracies in the FCC data used to develop the benchmarks. Determining how these inaccuracies have affected the benchmarks would be quite difficult.

2. The FCC's sample of small competitive systems is quite small, with the result that the benchmarks derived by the FCC are characterized by a significant degree of uncertainty.

3. A number of the systems used to develop "competitive" benchmarks are municipal systems or private systems engaged in price wars, whose prices would tend to understate the prices that are sustainable in long-run competition.

4. The FCC benchmark equation does not adequately predict the prices charged by small, competitive cable systems.

I will begin by summarizing how the FCC constructed its benchmarks, which is necessary to understand their infirmities. I will then explain my reservations about the benchmarks.

Benchmark Construction

To develop its competitive benchmarks, the FCC began by sending a questionnaire to systems serving 748 cable franchises, out of a total of approximately 30,000 cable franchises operating in the U.S.. Of the 748 surveyed franchises, 300 were randomly selected. The remainder consisted of at least one franchise belonging to each of the largest 100 cable systems and franchises where the FCC believed that "effective" competition was taking place. Cable systems were asked to report what basic cable service packages they provided, how many channels were supplied on each service and the price that was charged, as of September 30, 1992. They were also asked to report the number of subscribers to each service, and various other information.